



# **TOWN OF STOW**

## **Planning Board**

### **Handbook**

**Adopted July 7, 2008**  
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## PURPOSE

This booklet is an accumulation of material on Planning Board duties, requirements, policies, and procedures, implied and written. The intention is to provide guidance and reference for Planning Board members and not to supercede any existing laws or regulations. It is intended to be a living document and will be updated on a regular basis.

## REFERENCE MATERIAL

**Chapter 40A General Laws.** This document of legislated laws deals with concepts, procedures, requirements, and restrictions of zoning for the Commonwealth of Massachusetts.

**Chapter 41 General Laws.** Municipal Planning and Subdivision Legislation. This document of legislated law deals with procedures, requirements, and restrictions of municipal planning and the subdivision of land.

### **Rules and Regulations.**

- Town of Stow Rules and Regulations Governing the Subdivision of Land. This document sets forth with the guide lines of Chapter 41 the requirements and standard for subdividing land within the Town of Stow.
- Stow Planning Board Rules and Regulations for Site Plan Approval.
- Stow Planning Board Rules and Regulations for Special Permits.
- Stow Planning Board Rules and Regulations for Active Adult Neighborhood Special Permits.
- Stow Planning Board Rules and Regulations for Assisted Living Residences (Independent Senior Living Residence) Special Permits.
- Stow Planning Board Rules and Regulations for Planned Conservation Development Special Permits.
- Stow Planning Board Rules and Regulations for Wireless Service Facility Special Permits.

**Open Meeting Law Chapter 39, Section 23B.** This law mandates, with certain exceptions, that all governmental meetings and records be open to and available for inspection by the public.

**Town of Stow Zoning Bylaw.** This document sets forth the bylaws and ordinances that regulate the use of land, buildings, and structures within the Town of Stow.

## **DUTIES OF THE PLANNING BOARD**

**By statute, the Planning Board is responsible for:**

- Administration of the Subdivision Control Laws as granted by Massachusetts General Laws Chapter 41.
- Making careful studies (41-81-C).
- Preparing plans of resources, possibilities, and needs of the Town (Chapter 41-81-C).
- Reporting annually to the town regarding the condition of the Town (report appears in the Annual Town Reports). (Chapter 41-81-C).
- Making a Master or Study Plan from time to time (Chapter 41-81-D). In Stow, the Board of Selectmen appoints a separate Master Plan Committee, and the Planning Board contributes to and endorses the Plan.
- Establishing an official map (Chapter 41-81-E-F-G-H), if Town Meeting adopts an official map. The Town of Stow has not adopted an official map.

Members of the Planning Board are designated Special Municipal Employees for purposes of the State Ethics Laws (Chapter 268A).

## **JOB DESCRIPTION OF OFFICERS AND MEMBERS OF THE PLANNING BOARD**

By statute, the Planning Board shall elect annually a Chair and a Clerk (Chapter 41, Section 81-A). In Stow, the Planning Board also elects a Vice Chair.

The Stow Planning Board also annually appoints a Voting Associate Member and may appoint multiple Nonvoting Associate Members.

### **Chair shall:**

- Preside at all meetings of Board and Public Hearings.
- Appoint subcommittees or appoint individual members of the Board to investigate subjects of interest to the Board.

### **Vice Chair shall:**

- Take over duties of the Chair when the Chair is unable to perform his/her duties.

### **Clerk shall:**

- Keep a record of all meeting attendance and minutes when the Planning Coordinator is unavailable.

### **Planning Board members shall:**

- Attend as many meetings as possible, alerting the Chair or Planning Coordinator when they are unable to attend a meeting.
- Read all correspondence prior to meetings.
- Be prepared to do some work outside of regular meetings.

**Voting Associate Member shall:**

- Attend meetings when requested by the Chair.
- Vote only on Special Permit applications when a Planning Board member is unavailable for a public hearing. (The Voting Associate Member must attend all public hearing meetings for an application in order to vote.)

**Nonvoting Associate Members shall:**

- Attend meetings when requested by the Chair.
- Support specific projects or activities that the Planning Board undertakes as part of its work plan.

## **REORGANIZATION OF THE PLANNING BOARD**

### **Time**

At its first meeting after the Annual Town Meeting, the Planning Board shall reorganize.

### **Required Officers**

The board shall:

- Elect a Chair, a Vice Chair and a Clerk from its membership.
- Appoint voting and possibly nonvoting associate members.
- Appoint representatives to various committees, as needed.

## **OPEN MEETING LAW, CHAPTER 39, SECTION 23B**

- All meetings of the Planning Board shall be open to the public, and any person shall be permitted to attend any meeting.
- The Planning Board cannot meet in a private session unless such action is authorized by Chapter 39, Section 23B.
- A quorum of the Planning Board cannot meet in a private session for the purpose of deciding an issue or deliberating toward a decision unless authorized by the statute. Even though no actual vote is anticipated or taken, such meeting would not be exempt from the requirements of Chapter 39, Section 23B.

### **Notice Requirements**

Except in an emergency, a notice of every meeting of the Planning Board, including date, time, and place, shall be filed with the Town Clerk and be publicly posted forty-eight hours prior to said meeting. In calculating the forty-eight hours notice requirement, Saturdays are included, but not Sunday and legal holidays.

### **Emergency Meeting**

An Emergency, as defined, shall be a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. An emergency will be narrowly construed under the statute, and the burden of proof will be upon the person declaring the emergency to so prove it.

### **Executive Session**

Executive Session usually does not apply to Planning Board meetings; however, if it is believed that a session excluding the general public is required and in order, certain well-defined circumstances must be followed as outlined under Section IV, Executive Session, and VII, Recording Requirements, M.G.L. Chapter 39.

### **Chance Meetings**

The Open Meeting Law shall not apply to any chance meeting or a social meeting at which official business is discussed so long as no final agreement is reached. Chance or social meetings shall not be used to circumvent the spirit of the Open Meeting Law in dealing with matters before the Planning Board.

### **Recording Requirements**

1. The records of each meeting shall become public record.
2. Planning Board meetings may be recorded by a person in attendance by means of a tape recorder or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting and with advance notice to the Chair and Planning Coordinator.

## MEETING PROCEDURES

### **REGULAR MEETING: AGENDA**

Prior to each meeting, the Planning Department shall draft an agenda. Any individual or Planning Board member wishing to bring business before the Planning Board shall place that request in writing with the Planning Department. The Planning Board Chair may limit the number of appointments if the workload of the Board dictates. Time-sensitive applications will take precedence.

An agenda typically consists of the following agenda items:

### **PLANNING BOARD MEETING**

Date: \_\_\_\_\_

**Stow Town Building**

1.	7:00 PM	Call to Order
2.		Review Correspondence and Minutes
3.	7:10	Public Input
4.	7:15	Planning Board Members' Updates (News and Views, Committee Reports and Work Plan Update)
5.	7:20	Coordinator's Report and Review Action Items

#### ***Appointments***

6.		
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#### ***Discussion/Action Items***

7.		
8.		Executive Session
9.	10:00	Adjournment

#### ***Correspondence***

#### **TOWN BOARDS**

Hearings:

Decisions:

#### **AREA BOARDS**

#### **PUBLICATIONS**

#### **LOOKING AHEAD**

#### **GRANTS**

## **PUBLIC HEARINGS**

Any application for a subdivision, site plan approval or Special Permit, or any proposed changes to the Zoning Bylaw or the Rules and Regulations, requires a public hearing. The purpose of a public hearing is to provide the public with the opportunity to become fully acquainted with the proposed application or changes. All views and comments made at the hearing will be reviewed and considered to the maximum extent possible.

### **Rules of Conduct of Public Hearings Policy (adopted 06/03/2008)**

#### **A. SCOPE OF RULES**

These rules govern the practice, procedure and conduct of public hearings held by the Planning Board of the Town of Stow. These rules shall be liberally construed so as to enable the Board to accomplish its duties and responsibilities in a just, speedy and inexpensive manner. Where good cause appears, the Planning Board may permit deviation from these rules insofar as it may find compliance therewith to be impracticable or unnecessary.

#### **B. PUBLIC NOTICE**

Public notice procedures and the convening of public hearings shall be accomplished in accordance with applicable laws and regulations.

#### **C. PRESIDING OFFICER**

The presiding officer at all public hearings shall either be the Chairman or Vice-Chairman of the Planning Board or a member of the Planning Board who is selected by those members present at the hearing. The presiding officer shall have authority to:

1. rule upon methods of presentations by an applicant, the public, and Planning Board members;
2. regulate the course of the hearing;
3. rule upon issues of procedure;
4. take such other actions as may be ordered by the Planning Board or that are necessary for the efficient and orderly conduct of the hearing, consistent with these rules and applicable statutes.

#### **D. REGULATION OF CERTAIN RECORDING DEVICES**

Other than devices affixed to the building by a Town agency, the placement and use of television cameras, still cameras, motion picture cameras, or microphones at Planning Board hearings, for the purpose of recording the proceedings thereof may be regulated by the Chairman or the Presiding Officer so as to avoid interference with the orderly conduct of the hearing.

Any person audio taping or videotaping a public hearing should not do so secretly, but should advise the chairman in advance that he or she will be electronically recording the meeting.



## E. GENERAL CONDUCT OF THE PUBLIC HEARING

### 1. Opening Statement

The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct, which may include the public reading of sections 5 through 7, below (approximately 2 minutes of reading time).

### 2. Written and Verbal Presentations

#### (a) Applicant's Presentation

If the hearing is being held as a result of an application before the Planning Board, the applicant and/or anyone representing the applicant shall have the opportunity to present first, and may introduce documentary, photographic and real evidence including studies, reports, analyses and other information for the benefit of their application.

#### (b) Board Presentations

Any presentations and correspondence theretofore compiled by the staff, Board members, or consultants for the purpose of the hearing, shall be presented second. This shall include a list of all correspondence, printed or electronic, that has been included as part of the official record to date.

In the case of public hearings being held when no application has been received by the Board, such as in the case of proposed changes to the Zoning Bylaw or to Rules and Regulations, the Planning Board shall make its presentation first.

### 3. Questions and Comment Period

At the conclusion of the presentations, or at the conclusion of a specific portion or category of presentation, as determined by the Presiding Officer, all persons shall have the opportunity to make comments or ask questions through the Presiding Officer in the following order:

- (a) Planning Board Members and consultants, first;
- (b) Federal, State and other governmental agencies and representatives, second;
- (c) Members of the general public, third.

4. Speakers may speak on public hearing matters only during the designated public hearing and not as part of the Public Input agenda item.

5. It should be noted that the opinions expressed by individual members of the Board during the hearing do not necessarily represent the opinions of the Board as whole and should not be construed as such.

### 6. Time Limits

- (a) The presiding officer may limit the amount of time to be devoted to presentations. Generally, an applicant's initial presentation should be limited to 15 minutes, and

each question or comment should be limited to three minutes with the exception that one representative for a larger group shall be allowed five minutes to address the public hearing.

- (b) The presiding officer will request that those speaking avoid repetition in order to permit maximum information to be provided to the Planning Board within the time allotted to the hearing. The presiding officer may refuse to permit irrelevant, immaterial or repetitious questions or comments or other presentations which do not advance or serve the purpose of the hearing, and shall state the basis for such refusal on the record when requested to do so by the party asking the questions.

## 7. Protocol

- (a) Each person addressing the Planning Board shall first give his name and address in an audible tone of voice for the record.
- (b) All remarks shall be addressed to the Planning Board as a body and not to any member thereof.
- (c) No one other than the Planning Board and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Planning Board, without the permission of the presiding officer.
- (d) No question shall be asked a Planning Board member or applicant except through the presiding officer.
- (e) In all cases, the applicant shall have the right to respond to, or not respond to, questions or comments as they see fit.
- (f) Whereas an accurate record of the proceedings would otherwise be impossible, only one person shall have the floor and be allowed to speak at one time. All persons shall be silent at the request of the presiding officer.
- (g) All persons in attendance shall be respectful of protocol, and of the rights of others to speak uninterrupted when they have been given the floor. In accordance with the applicable provisions of the Open Meeting Law, if a person fails to honor a request for silence by the presiding officer and/or persists in disorderly behavior after warning from the presiding officer, the presiding officer may order him or her to withdraw from the meeting. If the disorderly person does not withdraw, the presiding officer may order a police officer, or other person, to remove the offender and confine him or her in some convenient place until the meeting is adjourned.

## 8. Varying Order of Appearance

When circumstances warrant, the Chairman or the presiding officer may vary the order in which presentations are given or questions and comments are received. The presiding officer may allow the elderly, disabled and those with child care needs to speak early during public hearings.

## F. CONCLUSION OF HEARING

At the conclusion of the hearing, no further evidence or testimony will be allowed into the record.

## G. REOPENING OF HEARING

At any time prior to a final decision, the presiding officer or the Chairman may reopen the record for further proceedings consistent with these Rules, provided, however, that the Chairman shall give notice of such further proceedings to the participants and the public in such manner as is deemed legal and appropriate.

### **Public Hearing Guidelines (adopted 6/10/2008)**

Depending upon the application, the Chair (or Presiding Officer) should communicate the following points when opening a public hearing, reflecting the Rules of Conduct of Public Hearings Policy:

- Tonight we are opening a public hearing for \_\_\_\_\_.
- Reading of Notice of Public Hearing (or waive)
- The applicant shall provide proof of abutter notification (certified mail return receipts).
- Planning Board introductions
- Procedure for the evening (*the order is dependent upon the application*):
  - An attendance sheet will be distributed; everyone needs to sign it.
  - The applicant will have 15 minutes to present.
  - We will then hear public comments.
  - We will then hear from the Planning Board's Consulting Engineer and other Town boards and committees.
  - Individually, Planning Board members will then ask questions or make comments on the application.
  - At the end of the hour, we will either close the hearing or continue it for further discussion.
- Some rules of conduct for the public input section:
  - Everyone who wants to speak will have the opportunity. You will be recognized by the Chair (or presiding officer).
  - Only one person shall speak at a time.
  - Please introduce yourself and where you live.
  - You have about three minutes to make a comment or ask a question.
  - If you are a representative of a large group, you have 5 minutes for your remarks.
  - Please direct your remarks to the Planning Board as whole and not to specific members.

- The applicant has the right to respond to or not respond to questions or comments as they see fit.
- Other rules of conduct:
  - Any person audio taping or videotaping the public hearing shall not do so in secret and only with advance notification.
  - Opinions expressed individually by Planning Board members during the hearing do not necessarily reflect the opinions of the Board as a whole.
  - Everyone here shall respect the rights of others to speak uninterrupted when they have the floor.
  - The Applicant shall not make changes to the plan based on one members input.

### **Action for Public Hearings**

The Planning Board must take final action under the following timetable:

- Preliminary Subdivision Plan – 45 days from date of submission
- Definitive Plan preceded by a Preliminary Plan – 90 days from date of submission of the Definitive Plan
- Definitive Plan not preceded by a Preliminary Plan – 135 days from date of submission of the Definitive Plan
- Non-Residential Subdivision (Preliminary Plan required) – 90 days from date of submission of Definitive Plan
- Special Permits – 90 days from close of the public hearing
- Site Plan Approval – 90 days from close of the public hearing
- Zoning Bylaw Amendments – 21 days from date of the Public Hearing

### **Voting Requirements for Public Hearings**

Members are required to be present throughout all sessions of a Public Hearing.

- Subdivisions – Majority vote of the Board
- Site Plan Approval – Majority vote of the Board
- Special Permits – 2/3 Majority vote of the Board
- Zoning Bylaw Amendments – 2/3 majority vote of Town Meeting

## **EFFECTIVE DATE OF ZONING BYLAW OR AMENDMENT**

The effective date for an addition or amendment to the Zoning Bylaw is the date it was voted by Town Meeting, conditional on following certain procedures after Town Meeting.

If the Attorney General disapproves the change, the previous zoning bylaw shall be deemed to have been in effect from the date of such vote.

### **Procedure After Town Meeting**

(Chapter 40A, Section 5, Paragraph 7)  
(Chapter 40, Section 32, Paragraph 1)  
(Chapter 40, Section 32A, Paragraph 1)

1. Within 15 days after final adjournment of town meeting, the adopted zoning change shall be submitted by the Town Clerk to the Attorney General.
2. The Attorney General approves or fails to act upon the zoning change within 90 days after receipt. If the Attorney General fails to act within 90 days, the Town Clerk shall enter into the records a statement that the by-law has become effective by reason of such failure of the Attorney General to act within the time limit.
3. After the Attorney General approves the zoning change or fails to act within the 90 days, it shall be either:
  - A. Published in a town bulletin or pamphlet and posted in one or more public places in each precinct of the town with the total posting being in at least five public places, or
  - B. Published in a newspaper of general circulation in the town. Such publication shall take place twice at least one week apart.
4. The publication of a zoning change shall include a statement similar to the following:

“Any Claims of Invalidity by reason of any defect in the procedure of adoption/amendment of this by-law/amendment may only be made within 90 days of this posting/the second publication (or if the time works out to be longer, within one hundred and twenty (120) days after the adoption of the by-law amendment. Copies of this by-law amendment may be examined and obtained at Stow Town Office.”
5. A copy of the effective zoning change must be sent by the Town Clerk to the Department of Community Affairs, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202. (Chapter 40A, Section 5, Para. 8)

## **CHANGES TO PLANNING BOARD RULES & REGULATIONS**

### **Procedure for Amendment or Adoption**

No change can be adopted until after a public hearing. Notice of said hearing shall be published in a local paper fourteen (14) days before the day of the hearing.

### **Procedure after Adoption**

A copy of the amendment must be certified by the Town Clerk. The Planning Board then sends by registered mail the certified copy to the Registry of Deeds and Land Court. (Chapter 41 81-Q)

### **Effective Date of Amendment**

The amendment becomes effective the day it is received by the Registry and Land Court. (Chapter 41 81-Q)

## EXEMPTIONS FROM ZONING AMENDMENTS (CHAPTER 40A.6)

**Plans in progress at time of a zoning change**—exempt during processing (including time to await and settle appeals). Applies to Preliminary Plans followed within 7 months by Definitive Plans and to Definitive Plans if either was submitted before a vote to change zoning.

**Endorsed subdivision plans**—exempt for eight (8) years from the date endorsed (7 years if endorsed before 1-01-1976). Exemption applies to both use and dimensional changes.

**Endorsed Approval Not Required plan**—exempt for three (3) years from the date endorsed from changes in use but NOT from dimensional changes.

**Amended or expanded plan**—exemption is unaffected except as waived by the applicant.

**Adjoining one- or two-family lots**—exempt for 5 years from effective date of zoning change, from greater area, frontage, width, yard, and depth requirements if, as of 1-01-76:

- lot WAS held in common ownership with adjoining land;
- lot conformed to zoning in effect on 1-01-1976;
- lot had at least 7,500 sq. ft. area and 75 ft. frontage (unless current zoning does not require that much);
- lot is one of not more than three adjoining lots in common ownership granted such exemption; and
- current zoning permits the proposed one- or two-family use.

**Building permits and Special Permits issued before the first notice of hearing on a proposed zoning change**—exempt for six (6) months from the date the permit was issued, provided construction or operation begins within the said period and is carried forward expeditiously to completion.

**Subdivision plans submitted before the effective date of a change to the Rules and Regulations**—exempt indefinitely.

Applies also to Preliminary Plans, provided that these are followed within seven (7) months by a Definitive Plan. (NOTE: If a new subdivision plan is submitted voluntarily, as a result of the expiration of zoning exemptions, or of a rescission, the new plan is bound by the Rules and Regulations that are in effect at the time of resubmittal EXCEPT for those lots already sold).

## **QUESTIONS AND ANSWERS**

### **Frontage And Area**

Q. Can the Planning Board waive lot and area requirements?

A. No. Petitioner recourse is the Zoning Board of Appeals.

### **Rules And Regulations**

Q. Can the Planning Board waive its own rules and regulations?

A. Yes, this is allowed under Section VII B of the Rules and Regulations.

### **Zoning And Plans**

Q. Can the Planning Board waive zoning bylaws?

A. No. The Zoning Board of Appeals has jurisdiction.

Q. In considering subdivision plans, should the Planning Board be concerned about zoning?

A. Yes. Chapter 41, 81-M states that the powers of the Planning Board under the subdivision control law shall be exercised with due regard for insuring compliance with zoning.

Q. Can the Planning Board sign plans that show zoning violations?

A. Yes, if the Zoning Board of Appeals has granted a variance for the violation. A variance has the legal effect of bringing the violation into compliance. Note that the Zoning Board of Appeals can only grant a dimensional variance should an application meet the requirements of a variance. The Zoning Board of Appeals cannot grant a use variance.

### **Approval Not Required (ANR)**

Q. Can the Planning Board approve an ANR plan that shows a zoning violation?

A. An ANR plan may meet all criteria as written in the statute and still create a zoning violation. The Planning Board is required to sign this plan; however, this does not mean the lot is buildable or that the use is conforming. Because of future legal problems, it is suggested that the petitioner go to the Zoning Board of Appeals for a variance or variances for his or her own benefit (*Ann Smalley v. Town of Stow*).

Q. Can the Planning Board sign a plan that makes a lot more non-conforming?

A. No. Petitioner recourse is the Zoning Board of Appeals.



### **Zoning Change – Spot Zoning**

Q. Does the Planning Board have to consider spot zoning when proposing the rezoning of districts?

A. Yes. The case of *James Farina Corp. v. City of Newton* restated the rule of law used prior to the adoption of 808. Spot zoning is still viable, and the Planning Board should consider this question whenever a zoning ordinance is proposed.

### **Subdivision**

Q. Can the Zoning Board of Appeals subdivide land?

A. No, but it can grant variances to zoning, front, side, and rear setbacks, as well as frontage and area.

### **Covenant**

Q. What happens when a plan is approved but not signed because there is no covenant?

A. The linen should be kept until the covenant is executed.

### **Meetings**

Q. Can a public hearing be held if a quorum of the Planning Board is not present?

A. No. There must be a voting quorum present, and only those who were present to hear testimony may vote if a vote is taken at another meeting.

Q. Can anyone speak at a Planning Board meeting?

A. Planning Board meetings are subject to the Massachusetts Open Meeting Law, which means that every meeting shall be open to the public, and any person, including the press, shall be permitted to attend. If the meeting room is too small and provisions are not made for all observers to listen in another room, the meeting is in violation of the law. Both sound recording and videotaping are permitted, but these operations should not disrupt the meeting. Additionally, noise from other nearby meetings or conversations may affect the meeting; however, doors to the meeting room must remain open.

An open meeting does not mean that it is open to comments and participation by the public. A working meeting is for the participation of committee members. A public hearing, however, provides an opportunity for the public to say something. Participation of observers is governed by the committee's rules, customs, and ultimately its chairperson.

**APPENDIX A: OUTLINE FOR ZONING BYLAW AMENDMENTS**  
**(Prepared by Kopelman and Paige, P.C.)**

1. A zoning proposal is submitted to the Board of Selectmen.
2. Within 14 days of receipt, the Board of Selectmen must submit a proposal to the Planning Board for review.
3. Within 65 days after submittal, the Planning Board must hold a public hearing.
4. Notice of Hearing:
  - a. published in newspaper of general circulation once in each of 2 successive weeks; 1<sup>st</sup> publication not less than 14 days before day of hearing. Case law states that “successive” weeks means calendar weeks.
  - b. posted in conspicuous place in City/Town/town hall for 14 days before day of hearing.
  - c. mailed to all of the following:
    1. Department of Housing and Community Development (DHCD).
    2. Regional Planning Agency.
    3. Planning Boards of all abutting cities and towns.
  - d. mailed, if zoning bylaw or ordinance so requires, to all non-resident property owners who file proper request for such notice with municipal clerk.
5. Content of notice must include:
  - a. date and place of hearing.
  - b. subject matter of hearing “sufficient for identification”
  - c. place where maps and texts of proposal may be inspected.

NOTE: All of these notice requirements must be carefully followed.
6. Town Meeting may not vote on the proposal until either
  - a. The Planning Board submits written or oral report with recommendations, or
  - b. 21 days have elapsed between the Planning Board hearing and the Town Meeting vote.
7. The proposal must be voted by Town Meeting within 6 months of Planning Board hearing.
8. Quantum of Vote: 2/3 vote by Town Meeting
9. Zoning bylaw unfavorably acted upon by Town Meeting may not be reconsidered within 2 years unless the Planning Board makes a recommendation to do so.
10. Zoning (and general) bylaws must be submitted to the Attorney General for approval:
  - a. within 30 days after final adjournment of Town Meeting, the Town Clerk must submit:

1. certified copy of bylaws
  2. request for approval
  3. statement explaining bylaw
  4. maps and plan, if any
  5. proof of procedural
11. Bylaws approved by Attorney General (including those made effective by Attorney General's failure to act in within 90 days of the Town's submittal) must be:
  - a. published in a town bulletin/pamphlet copies of which must be posted in at least 5 public places, including 1 or more public places in each precinct, if applicable.
  - or b. published at least twice one week apart in newspaper generally circulated in town.
  - or c. delivered to every occupied dwelling or apartment in town (affidavits or persons delivering said copies must be filed with town clerk).
12. A true copy of a zoning ordinance or bylaw with all amendments must be kept on file in the Town Clerk's office.

## **APPENDIX B: POLICY ON ONE-LOT SUBDIVISIONS (Adopted 06/03/2008)**

For the purpose of this policy, the definition of a one-lot subdivision shall be the creation of a new road for the purpose of providing frontage for one new buildable lot without the ability for the new lot to be further subdivided due to dimensional constraints.

Whereas, there is considerable difference of opinion on the legality of one-lot subdivisions, and

Whereas, one-lot subdivisions would likely only be proposed where a parcel of land cannot meet the requirements for the creation of a hammerhead lot, and

Whereas, the creation of new roads is not in the best interests of the Town by virtue of the fact that most roadways become untaxable parcels with questionable ownership, and

Whereas, it is commonly understood that the abutters to a private way have equal rights of access to such private way, but in the case of a one-lot subdivision it is presumed that the applicant's intent is for the owners of the newly created lot to have sole rights to the proposed road, and

Whereas, one-lot subdivisions create buildable land where no other options under current zoning restrictions exist,

We, therefore, adopt the following policy for the consideration of applications for one-lot subdivisions:

A one-lot subdivision shall only be approved if one or more of the following conditions are met:

- If a considerable public benefit can be shown,
- If the subdivision is created as a condition of approval, or
- a public detriment can be shown if the application is denied

Public benefit can be in any form considered appropriate by the Board, including but limited to one or more of the following examples:

1. The creation of a sidewalk along the frontage
2. The creation of a sidewalk easement along the frontage
3. A donation to the Town of Stow Sidewalk Fund
4. The creation of a public access trail easement to existing or proposed open space or conservation land
5. The dedication of open space for the benefit of abutters and/or the public
6. The proposal allows for creation of a housing size or type that promotes diversity in town, such as price or method of ownership
7. Alternative development potential for the subject parcel or the subject parcel in combination with abutting parcels or lots could conceivably create many more buildable lots or result in greater disturbance to the environment or result in considerably more impervious surface

8. Alternative development potential could result in the loss of historical structures or landscapes
9. Alternative development potential could result in the loss of significant trees or other significant natural features

## **APPENDIX C: PUBLICLY EXPRESSING THE POSITION OF THE BOARD (Adopted 06/03/2008)**

It shall be the policy of this Planning Board that no individual member of the Planning Board shall express or represent an official position of the Planning Board that does not reflect that of the majority of the membership once an official vote has been taken that establishes the official position of the Planning Board on any particular matter. No minority opinion shall be expressed as an official position of the Planning Board.

Whereas, the general public, members of other town boards, other town officials, and applicants appearing before the Planning Board often perceive that the opinions expressed by individual Planning Board members reflect those of the Planning Board as a whole; therefore, any member who chooses to publicly express an opinion that is contrary to that of the official position of the Planning Board, or when no official position of the Planning Board has been established, shall make it clear to whomever they are speaking or writing that they are not representing the Board and that their opinion does not reflect that of the majority of the Planning Board.

Whereas, during public meetings and public hearings when an applicant is appearing before the Planning Board, many opinions are expressed that often leave an applicant confused as to the official position of the Planning Board and/or result in unnecessary or inappropriate changes to a plan which may cause unnecessary continuations of a hearing, be wasteful of the Planning Board's time, and be costly to an applicant; therefore, every reasonable effort shall be made by the Planning Board members, especially the Chairman, to establish the majority opinion of the Planning Board on specific issues raised during the process, thereby expediting the process for the benefit of all.

## **APPENDIX D: SIDEWALK POLICY** **(Adopted 03/1997, Revised 10/14/2008)**

In an effort to respond to Town Meeting, the Stow Master Plan adopted May 1996, and the Joint Boards meeting of March 17, 1997 the Planning Board adopted the following policy:

The Planning Board will not waive requirements of the subdivision Rules and Regulations relative to sidewalks. In locations where a sidewalk is deemed not feasible or necessary, the Planning Board will:

1. Require a sidewalk in the surrounding area if the subdivision causes detrimental impact to the area; or
2. Entertain an offer from the applicant for contributions to be deposited into an account identified specifically for construction of sidewalks, pathways, walkway, or bike paths in the Town of Stow.

The Planning Board will establish priorities for location of sidewalks/pathways, based on the following criteria:

1. Existing sidewalks
2. Area where sidewalks are needed
3. Dangerous intersections
4. Sources of traffic
5. Destinations
6. Areas where sidewalks are already planned
7. Constraints (wetlands, farmland, etc.)

### **Sample Decisions**

#### **Waiver**

The Board DENIES the requested waiver to provide sidewalks along that portion of any existing public street upon which the subdivision has frontage.

#### **Plan Modification**

The required sidewalk along the subdivision frontage may be constructed on site in which case the plan shall be modified accordingly. Or, the applicant may donate a sum of money as required in condition \_\_\_\_ below for the purpose of constructing sidewalks in Stow.

#### **Condition**

If the applicant elects not to construct the required sidewalk along the subdivision frontage as discussed in the Plan Modification above, the applicant shall donate to the Town of Stow the sum of \$\_\_\_\_\_ for future construction of sidewalks in Stow prior to endorsement of the Plan or shall secure the donation in the required performance guarantee.

**Waiver from Section 8.7 of the Subdivision Rules which requires construction of a sidewalk along the subdivision roadway.**

The requested waiver is GRANTED to allow instead the donation of money for the construction of sidewalks elsewhere in stow as conditions herein because a sidewalk along existing streets will be of greater public benefit.

Condition

The Applicant shall donate to the Town \$\_\_\_\_\_ for the construction of future sidewalks on existing town ways. This donation shall be made prior to the issuance of the \_\_\_\_\_the building permit for the Site. (\$\_\_\_\_.00 per linear foot)

\$35.00 per linear foot for frontage

\$20.00 per linear foot for subdivision road



**APPENDIX E: STORMWATER MANAGEMENT POLICY - APPLICABLE FOR  
SUBDIVISION APPROVAL AND INTERPRETATION OF SECTION 3.8.1.9  
(DRAINAGE) OF THE ZONING BYLAW  
(Adopted 04/29/2008, revised 04/29/2008 and 07/22/2008)**

The Planning Board will presume that projects meeting the 2008 Massachusetts Stormwater Handbook, or as subsequently amended, satisfy the requirements of Section 3.1.8.9 of the Stow Zoning Bylaw and related Subdivision Rules and Regulations, Site Plan Approval Rules and Regulations and Special Permit Rules and Regulations, and therefore are presumed to also satisfy other regulatory requirements, as stated in said handbook.

**Stormwater Management**

The objective of stormwater management for Stow is to design a system in such a way so that the volume and peak runoff from the development of a parcel will be no greater after the development is completed than it was before the development was started, and that the water quality will meet required Department of Environmental Protection (DEP) standards.

**Stormwater Management Requirements**

The design of a Stormwater Management System shall comply with the requirements of the 2008 Massachusetts Stormwater Handbook, subsequently known as the Handbook.

Throughout the Handbook, where the “Conservation Commission” is identified, substitute “Planning Board and Conservation Commission.” This does not relieve the applicant from complying independently with the Conservation Commission’s requirements.

The Planning Board, through its review process, may set more stringent requirements than are specified in the Handbook. The Planning Board may require subdivisions of any size, as well as Special Permit applications and site plans, to be compliant with the Handbook.

The Planning Board adopts the requirements of the stormwater management standards listed in the Handbook.

**Best Management Practice (BMP) prioritization**

Although the Planning Board is aware that the Best Management Practice (BMP) techniques employed depends largely on the site’s hydrological features, it has placed a high priority on environmentally sensitive site design techniques for stormwater management, including:

- Minimizing impervious surfaces
- Fitting the development to the terrain
- Preserving and using natural drainage systems
- Reproducing pre-development hydrologic conditions

## **Stormwater Management Design Process**

### **Preliminary Stormwater Design Plan**

The applicant shall present a Preliminary Design Plan for the stormwater management system prior to submission of a Definitive Plan.

In the Preliminary Design Plan, the applicant shall be prepared to discuss and justify the design approach for stormwater management. The Planning Board will consider the three stormwater management components in order of priority as described in the Handbook:

- Site Planning: Design the development using environmentally sensitive site design and low impact development techniques to preserve natural vegetation, minimize impervious surfaces, slow down times of concentration, and reduce runoff;
- Source Controls, Pollution Prevention, and Construction Period Erosion and Sediment Control: Implement nonstructural measures to prevent pollution or control it at its source; and
- Structural BMPs (physical devices typically designed and constructed to trap or filter pollutants from runoff or to reduce runoff velocities): Design, construct and maintain structural BMPs to attenuate peak flows, capture and treat runoff, and provide recharge to groundwater.

The Planning Board will emphasize using environmentally sensitive site design and low impact development techniques to minimize the amount of onsite disturbance and to lessen the need for BMPs for stormwater quality treatment and volume/velocity management.

The applicant shall provide a detailed description of the approach being applied to satisfy the standards in the Handbook. At a minimum, the applicant shall consider and present the design based on the Checklist for Stormwater Report, located in the Handbook, to the Planning Board.

For the parcel being developed, the applicant shall provide a drawing of the site that identifies each watershed in the parcel and every watershed of which the parcel is a part, the Hydrological Soil Group (A, B, C & D) for each of the sub-areas, and the impervious areas to be developed on the parcel. All wells, septic systems and critical areas are to be identified on the drawing for the parcel and abutting parcels within 150 ft of the parcel being developed

The Planning Board will review the proposed design, evaluate the design, and provide comments on the design.

### **Definitive Stormwater Design Plan**

The applicant shall:

- Implement the design proposed in the preliminary design plan as modified by the comments received from the Planning Board. The final detailed design shall be

presented to the Planning Board for final review and comment. The Planning Board may reject a detailed design, which does not address the issues identified by the Planning Board from the preliminary design.

- Provide data for all Water Quality and Recharge calculations based on the Stormwater Management System design.
- Provide the source data for all Water Quantity Volume calculations.
- Provide the source data for all Stormwater Recharge calculations.
- Provide the source data for all Peak Discharge Rate Calculations
- Provide data for the TSS removal calculations.
- In addition, the Planning Board may require that the data necessary to use Rational Equation Method be provided.

#### **Stormwater Management System Appropriate for a Parcel**

The submission to the Board of any development of land has to recognize that stormwater management requirements may be the constraining factor in the amount of the proposed impervious surface and thus the number of units that can be built on a parcel in Stow.

## **APPENDIX F: PERFORMANCE GUARANTEE POLICY (Adopted 09/09/2008)**

### **Introduction**

Before endorsement of its approval of a subdivision plan, the Planning Board is required by Massachusetts General Law (G.L.) Chapter 41, Section 81-U to secure the construction of ways and the installation of municipal services. Section 81-U provides four ways to secure the construction of ways and the installation of municipal services:

1. A proper bond;
2. The deposit of money or negotiable securities;
3. A covenant; or
4. An agreement given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient to secure the construction of ways and the installation of municipal services.

The Subdivision Rules and Regulations of the Town of Stow acknowledge these alternative methods for securing the construction of ways and for the installation of municipal services.

As the agency in charge of enforcing the Subdivision Control Law, the Planning Board has experienced significant problems with regard to subdivision construction that has sought to use a bond as a security guarantee. In addition, although to a lesser extent, the Planning Board has experienced problems with poorly defined tasks and schedules for all methods used to secure construction. Significant problems, including the expenditure of costs for staff and legal resources, resulted when bonds were placed with out-of-state bonding companies, the contractor of the subdivision defaulted and the Town's legitimate claims for compensation were ignored. Accordingly, in order to more properly fulfill the purposes of the security guarantee requirements of the Subdivision Control Law, the Planning Board hereby adopts the following policies:

### **Policy**

#### **1. Financial Institutions and Bonding Agencies**

Any financial institution or bonding agency used to provide surety and security for the construction of ways and the installation of municipal services within a subdivision approved by the Planning Board shall be incorporated in the Commonwealth of Massachusetts. The Planning Board may allow an entity not incorporated in the Commonwealth to provide security if, in the Planning Board's sole judgment, the entity has a successful history in providing similar security, is in good standing in the state where it is incorporated, has not previously defaulted on a surety obligation and has the assets necessary to guarantee the completion of the relevant subdivision project in accordance with the purposes of G.L. c.41, s.81-U.

## 2. Documents to Accompany Security Guarantee

Regardless of the method used to secure the performance guarantee required by statute and as selected by the applicant, the security guarantee shall include acknowledgement of a list of detailed tasks to be performed, their costs and a timeline for completion.

All agreements with a financial institution or bonding agency providing the performance guarantee shall include, but not be limited to, the following and shall be approved and endorsed in writing by all parties to the agreement, including the Stow Planning Board. In addition, every performance guarantee used to secure a subdivision of land in Stow shall contain the acknowledgment that the Stow Planning Board reserves sole authority to determine whether the work as required by the definitive plan approval has been satisfactorily completed and whether the applicant is in default, as defined below.

- A detailed list of tasks to be covered by the performance guarantee, as approved by the Planning Board in the definitive plan and/or special permit approvals granted by the Planning Board.
- A cost estimate for each task, prepared by the applicant and approved by the Planning Board. The performance guarantee shall be in the amount of 150% of the estimated costs of construction.
- A detailed schedule for each task including contingency plans for weather or other possible grounds for work stoppage or delays.
- The financial institution or bonding agency shall provide to the Planning Board the monies listed for uncompleted tasks if the applicant fails to complete the required task list within the agreed-upon schedule or if the applicant or successor defaults (as defined below) on completing a Definitive Plan as approved by the Planning Board. The Planning Board recognizes that it is difficult to effectively demonstrate that an applicant has “defaulted” on the completion of an approved subdivision. Accordingly, the Planning Board hereby requires that the financial institution or bonding agency acknowledge that, unless otherwise waived in writing by the Planning Board, an applicant constructing a subdivision shall be deemed to have defaulted on said project if said construction is not satisfactorily completed within twelve (12) months of the Planning Board’s written claim to the applicant and the financial institution or bonding agency that said project is in default. Within thirty (30) days of receipt of said written claim, the financial institution or bonding agency shall make payment to the Planning Board consistent with the terms of the security guarantee.
- The Planning Board shall retain a minimum of \$20,000 of the performance guarantee until acceptance of the final as-built plan.

An applicant shall be considered in default for any of the following reasons:

- Failure to complete a task by the date indicated on the schedule;
- Failure to complete a substantive task satisfactorily, despite written identification of said deficiency from the Planning Board without adequate and timely resolution by the applicant;
- The declaration of bankruptcy or insolvency by the applicant;
- The declaration of bankruptcy or insolvency by the financial institution or bonding agency holding security for the approved subdivision;

- Notice to the Planning Board of the withdrawal, cancellation or termination of any performance guarantee or of a request to substitute a performance guarantee prior to the scheduled completion date of the work.

## **APPENDIX G: APPLICATION POLICY** **(Adopted 08/12/2008)**

In order for the Planning Board to evaluate the merits of an application, the Planning Board has adopted as policy that an applicant shall submit a complete application package for:

- Approval Not Required (ANR) proposals
- Subdivision proposals (Preliminary and Definitive plans)
- Special Permit proposals (Preliminary and Definitive plans)
- Modifications to Special Permit proposals
- Site plan approval

A complete package is one that includes all information required by and the completion of all required forms located in the Planning Board's appropriate Rules and Regulations and any related fees. If the Planning Board deems an application to be incomplete, it may deny the application without prejudice.

## **APPENDIX H: CONSERVATION RESTRICTION POLICY** **(Adopted 08/12/2008)**

The Planning Board has adopted as policy that an applicant shall use the Massachusetts 2008 Model Conservation Restriction, or as subsequently amended, to satisfy the requirements of a restrictive covenant for protected open space parcels resulting from subdivision or Special Permit approval.

## **APPENDIX I: FIRE CISTERN POLICY** **(Adopted 08/12/2008)**

The Planning Board has adopted as policy that an applicant shall comply with the *Fire Protection Cisterns* policy of the Stow Fire Department, dated May 2001 or as subsequently amended, to satisfy the requirements of Section 7.8.2.2 of the Subdivision Rules and Regulations and any subsequent rules and regulations relating to fire protection.

Furthermore, the applicant shall meet all requirements of the cistern specifications as defined in *Fire Protection Cisterns*, including the installation of required marker signs. The Fire Department shall approve the installed fire protection cistern and its marker sign before issuance of the first occupancy permit.